

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**FRIDAY
OCTOBER 5, 2012
8:00 A.M.
PLANNING DEPARTMENT CONFERENCE ROOM**

MEETING NOTES

PRESENT:

JOE GILLIS, CHAIRMAN
LEN HOUSE, VICE CHAIRMAN
FRAN REED, TREASURER
WILLIAM SULLIVAN, MEMBER
ARLENE M. SITTERLY, MEMBER
JOSEPH SEMIONE, MEMBER
JAMES MRAZ, IDA EXECUTIVE DIRECTOR
KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH, P.C.

I. MINUTES FROM SEPTEMBER 13, 2012 MEETING:

MOTION : To accept as presented
MADE BY : Fran Reed
SECONDED : William Sullivan
VOTE : Unanimous

II. BUDGET REPORT:

MOTION : To accept as presented.
MADE BY : Arlene Sitterly
SECONDED : Joseph Semione
VOTE : Unanimous

DISCUSSION: Bill Sullivan asked if the entry under “other non-operating revenues”, which is shown as a deficit is correct. Jim Mraz stated that there should be a number shown in the “to date” category that equals the amount of money that the IDA has taken to date from its reserve account to pay for its operating expenses. He stated this will be corrected on future Budget Reports.

III. COMMITTEE REPORTS:

A. Nominating Committee:

- No report.

B. Audit Committee:

- No report.

C. Governance Committee:

- No report.

D. Finance Committee:

- No report.

IV. OLD BUSINESS:

A. 1988 Incubator Building Project in Crossroads Industrial Park:

- No new information to report.

B. Tryon Technology Park and Incubator Center Project:

1. Agreement with NYSOGS/ESD/IDA:

- IDA Chairman executed Agreement and forwarded to ESD Attorney.

2. Agreement with C.T. Male for Phase I Environmental Site Assessment:

- C.T. Male has been released to start work.

3. Agreement with Carol's Abstracting for Title Work:

- Carol's Abstracting has been released to start work.

DISCUSSION: Jim Mraz stated that he recently gave a tour of Tryon to Dustin Swanger, President of FMCC, Patrick Mitchel, District Superintendent HFM-BOCES, Larry Kelly, Nathan Littauer Hospital and Mike Reese, President of CRG. All attended thought that the IDA's plan to take title to the property and convert it into the Tryon Technology Park and Incubator Center was an excellent concept to be pursuing.

C. CG Roxane Water Bottling Plant Project:

1. Closing:

- Lease and PILOT Agreements have been finalized.
- Metes and bounds description of land parcel to be transferred to IDA along with map prepared by licensed land surveyor have been submitted.
- Closing should be shortly.

DISCUSSION: Kara Lais stated that she received on October 4, 2012 the sign closing documents from CG Roxane. She stated they are still waiting for the deeds for the properties CG Roxane acquired for Old Sweet Road. She has a conference call scheduled for today with Page Beykpour to discuss the status of those properties.

2. Status of Construction:

- Site clearing completed.
- Concrete footings/walls completed.
- 50% of steel has been erected.
- Gravel being placed for Old Sweet Road.
- Asphalt paving ongoing.

D. IDA Parcel on West Side of NYS Route 30A:

- Economic Development/Environment Committee recommended to Board of Supervisors that Demolition Team tear building down.
- Board of Supervisors will meet on October 9, 2012 to give final approval.
- If Board of Supervisors approve, the Demolition Team will try to complete demolition project in 2012.

V. NEW BUSINESS:

A. Request for Early Termination of Lease for Property at 141 Sal Landrio Drive:

1. Background:

- The IDA currently leases the building at 141 Sal Landrio Drive in Crossroads Business Park to STAG.
- STAG subleases the building to EPIMED.
- Article XI of the Lease contains language dealing with early terminations:

SECTION 11.1. EARLY TERMINATION OF THE LEASE AGREEMENT. The Company shall have the option, at any time, to terminate the Lease Agreement by purchasing the Project Facility or to terminate this Lease Agreement pursuant to Section 7.1(c), upon compliance with the requirements set forth in Section 11.2 hereof, and payment to the Agency equal to \$1,000.00 per year of occupancy under this Lease Agreement, at any time after the 12th month hereof.

SECTION 11.2. CONDITIONS TO EARLY TERMINATION OF THE LEASE AGREEMENT. To exercise such option, the Company shall provide ninety (90) days written notice to the Agency and the Lender and shall specify therein the date of purchase or termination.

SECTION 11.3. CONVEYANCE ON PURCHASE. At the closing of the purchase of the Project Facility pursuant to Section 11.1 hereof, the Agency shall, deliver to the Company all necessary

documents (a) to convey to the Company title to the Property being purchased, as the Property exists, subject only to the following: (i) any Liens to which title to such Property was subject when conveyed to the Agency, (ii) any Liens created at the request of the Company, or the creation of which the Company consented to or in the creation of which the Company acquiesced, (iii) any Permitted Encumbrances and (iv) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default, (b) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility, and (c) to discharge and release any security interest held by the Agency and to release any other liens or encumbrances held by the Agency and not set forth above. Upon delivery of such title by the Agency, the Company shall deliver a release and agreement that the exculpation provisions and the obligations of the company in Section 5.3(b) and 8.2 hereof, together with the obligation to insure the same, shall survive such conveyance on purchase of the Facility.

2. Request for Early Termination:

- On September 13, 2012, the IDA received a letter from STAG formally advising that STAG is exercising its right of early termination of this Lease, per Section 11.1 of the Lease.
- The IDA and STAG must complete the process to terminate this lease within 90 days or December 6, 2012.
- STAG has requested that the IDA approve this request by October 9, 2012.

3. Impacts of Early Termination of Lease Agreement:

- The existing Lease and PILOT would be terminated.
- The property would no longer be tax exempt.
- The property would immediately return to the tax rolls.
- The property would start making property tax payments and not PILOT payments.
- The IDA would no longer have to report these projects under PARIS after 2012.

4. Documents that will have to be executed by IDA for each individual project:

- Deed
- TP-584 Form
- RP-5217 Form
- Lease Termination Agreement

5. IDA Legal Fees:

- IDA would pay for cost of Kara Lais representing the IDA in this transaction.

6. Payment Due IDA:

- The lease to be terminated includes a provision whereby a payment is due the IDA if the lease is terminated early.
- This payment would be due at closing. Estimated payment due: \$12,166+/-

7. Review Resolution:

- A. See handout.

DISCUSSION: Jim Mraz reviewed the information on the Agenda. Kara Lais provided a copy of STAG's check in the final amount of \$12,850 as was required by Section 11.1 of the Lease Agreement. Kara Lais stated that STAG is asking for an early Lease Termination Agreement because the property is going to be transferred to a different STAG subsidiary from who the Lease is with. The IDA's lease is currently with STAG Albany II, LLC. Upon lease termination, the transfer will not be to that company but to STAG Gloversville 3, LLC. Kara Lais stated that STAG has the right to pursue this early termination. She confirmed that the IDA does not have the ability to disapprove this request.

Bill Sullivan asked if EPIMED has been made aware of STAG's intention. Jim Mraz stated yes.

Jim Mraz asked if there were any other questions. There were none.

IDA ACTION:

MOTION: To approve a resolution approving a deed conveyance from the Agency to STAG Gloversville 3, LLC and authorizing execution and delivery of the same and authorizing the Chairman to execute the Lease Termination Agreement with STAG.

MADE BY: Len House
SECONDED: Arlene Sitterly
VOTE: Unanimous

IDA DISCUSSION: Kara Lais stated that she thinks that the amount of \$1,525 may not be correct. She thought that the figure was actually less. It was agreed that the IDA Board would approve a payment to Fitzgerald, Morris, Baker and Firth in the amount not-to-exceed \$1,525. If it's determined that the amount is less, Kara Lais stated that she would send a revised invoice to the IDA.

MOTION: To authorize a payment in an amount not to exceed \$1,525 to Fitzgerald, Morris, Baker and Firth for legal services rendered in this transaction.

MADE BY: Joseph Semione
SECONDED: William Sullivan
VOTE: Unanimous

B. Review STAG's Request for Estoppel Certificates:

1. Background:

- STAG has requested that the IDA execute Estoppel Certificates for the following properties:

- 1) 109 Balzano Drive, Gloversville, NY
- 2) 122 Balzano Drive, Gloversville, NY
- 3) 125 Balzano Drive, Gloversville, NY
- 4) 141 Sal Landrio Drive, Gloversville, NY
- 5) 6 Clermont Street, Johnstown, NY

6) 150 Enterprise Avenue, Johnstown, NY

7) 231 Enterprise Drive, Johnstown, NY

- An Estoppel Certificate represents a guarantee that the information contained in the Certificate is accurate.
- The Estoppel Certificate acknowledges the existence of the following Protective Covenants:
 - 1) Protective Covenants, Crossroads Industrial Park, Gloversville, NY, adopted by Fulton County Industrial Development Agency, September 28, 1988, and recorded in the Fulton County Registry of Deeds in Book 638, Page 353;
 - 2) Protective Covenants, Johnstown Industrial Park, Johnstown, NY, dated December 31, 1991, and recorded in the Fulton County Registry of Deeds in Liber 697, Page 92, as amended by Amendment No. 1, dated May 29, 1991, and recorded in the Fulton County Registry of Deeds in Liber 700, Page 232; and
 - 3) Protective Covenants, Crossroads Business Park, adopted July 21, 1999, and recorded in the Fulton County Registry of Deeds in Liber 842, Page 216 (each of the foregoing being an “Agreement”, and collectively, the “Agreements”).
- The Estoppel Certificate asks the IDA to certify that:
 - 1) The undersigned has the power and authority under each Agreement to confirm the status of compliance of the applicable Properties and its owner with each applicable Agreement.
 - 2) Except as expressly set forth above, no amendment, modification or supplement to any of the Agreements exists, each Agreement is in full force and effect, and the version of each Agreement recorded with the Fulton County Clerk’s Office is a true, correct and complete version thereof.
 - 3) The owner or owners of the Properties from time to time on or prior to the date hereof (collectively, “Property Owners”) have fully performed all of their obligations under the applicable Agreements to be performed on or prior to the date hereof (including but not limited to any obligations set forth therein with respect to the applicable Properties).
 - 4) Neither the Property Owners, nor any Property, is in default of any obligations, covenants, conditions, restrictions or other provisions of the applicable Agreements.
 - 5) All aspects of each Property, including without limitation the current use thereof and all structures and improvements located thereon, is in full compliance with all the terms and provisions of each of the applicable Agreements.

- 6) No assessments or other charges are due to the undersigned from the Property Owners under any of the Agreements.
- 7) The Properties and all improvements thereon comply with all terms and provisions of the applicable Agreements.
- 8) The consent of the undersigned is not, and shall not be, required with respect to any transfer of any of the Properties or any financing secured by any of the Properties.

2. Presentation by Kara Lais, IDA Counsel:

IDA DISCUSSION: Kara Lais reviewed the information on the Agenda regarding STAG's request to the IDA to execute Estoppel Certificates. She stated that this was a request from STAG. She stated the IDA is not required and is under no obligation to execute these Estoppel Agreements. She reviewed the concerns that Jim Mraz and she originally identified when this request was submitted to the IDA. She stated the language has been modified that better protects the IDA. She stated this request is in all likelihood coming from Wells Fargo as part of STAG's refinancing of these buildings.

Kara Lais explained that the intent of these Estoppel Certificates is for the IDA to certify that all properties are in compliance with the IDA's Park Covenants in these parks.

Jim Mraz stated that the Park Covenants, for the most part, mirror the requirements of the City of Johnstown's Zoning Ordinance. The Park Covenants do not provide specific authorization to the IDA to administer and enforce the Covenants. He stated, however, the City of Johnstown has enforcement authority under the provisions of the City's Zoning Ordinance. He asked Kara Lais if there is an unwritten understanding with respect to Park Covenants that the entity adopting the covenants has an inherent responsibility and authority to administer and enforce the provision. She stated that she was not sure. Jim Mraz added that since the Park Covenants and Zoning Ordinances are very similar, the City of Johnstown is actually in a better position to review and determine whether these properties are in compliance with the Zoning Ordinance/Park Covenants.

Bill Sullivan suggested that the IDA ask for a Hold Harmless provision to be included into the Estoppel Agreement. Kara Lais stated that is something the IDA certainly could ask for. Bill Sullivan then suggested that if STAG wants this Estoppel Certificate and would not provide a Hold Harmless provision that the IDA should tell STAG to hire the City of Johnstown to review each of the properties for compliance with the Park Covenants.

IDA ACTION:

MOTION: To advise STAG that the IDA will execute the Estoppel Certificates if a Hold Harmless provision is included in them and in the event that STAG does not consent to this that the IDA advise STAG to hire the City of Johnstown to review each property's compliance with the City's Zoning Ordinance/Park Covenants and to provide their written findings to STAG for each property.

MADE BY: William Sullivan
SECONDED: Arlene Sitterly
VOTE: Unanimous

C. Proposed Changes to EPA's Definition of Navigable Waters:

1. Background:

- The EPA and US Army Corps of Engineers are trying to expand the jurisdictions of the Clean Water Act (CWA) authority over wet areas and even dry areas on private lands through changes to federal regulations and not through legislative changes.
- The 1972 CWA limits federal jurisdiction to “navigable waters” of the United States. Recent Supreme Court decisions affirmed that EPA’s CWA jurisdiction over “navigable waters” is limited and thus does not extend to all waters.
- The EPA and the Corps are seeking to expand their authority beyond what was granted to them by Congress in the CWA in conflict with the Supreme Court decision.
- The Fulton County Farm Bureau requested that the Board of Supervisors go on record to urge the EPA and the Corps to withdraw the draft CWA guidance immediately and to work collaboratively with states and local governments to enforce the current scope of the CWA while respecting the authority of state and local governments in ensuring the protection of water resources.
- It is recommended that the IDA Board take a similar stance since these new regulations could directly affect the IDA’s ability to develop its shovel-ready sites.

IDA DISCUSSION: Jim Mraz stated that the IDA has had a long history in dealing with federal wetlands administered by the Army Corps of Engineers. He stated what is being advanced would be a significant expansion of the definition of wetlands that could make it more difficult for projects to be developed locally. He said the Fulton County Board of Supervisors would be voting at its October 9th meeting to go on record opposing this expansion of the definition of navigable waters.

IDA ACTION:

MOTION: To have the IDA Board go on record opposing any jurisdictional expansion of the CWA and to authorize and direct the Executive Director to send letters to the EPA, US Army Corps of Engineers and to New York’s United States Senators and Congressmen advising them of the IDA’s opposition.

MADE BY: Joseph Gillis
SECONDED: Fran Reed
VOTE: Unanimous

D. Invoice from Fitzgerald, Morris, Baker and Firth:

- Fitzgerald, Morris, Baker and Firth has submitted its annual invoice under its Agreement with the IDA to provide legal services.
- Total Retainer is \$5,000.
- Total Invoice is \$5,050.
- Invoice includes \$50 in express mail costs incurred as part of Tryon Project.

IDA ACTION:

MOTION: To authorize a payment to Fitzgerald, Morris, Baker and Firth in the amount of \$5,050.

MADE BY: Joseph Gillis
SECONDED: Len House
VOTE: Unanimous

VI. OTHER BUSINESS:

A. Request from NYS Department of Environmental Conservation:

1. Background:

- On September 28, 2012, the IDA received a written request from the NYS Department of Environmental Conservation (NYSDEC) to allow access onto two (2) IDA parcels of land as part of a study being conducted on mink populations in the Hudson and Mohawk River watershed.
- The two (2) parcels are:

<u>SBL</u>		<u>Location</u>
174.18-1-19	:	west side of NYS Route 30A
185.6-1-1	:	north side Opportunity Drive
- Study being conducted by Hudson River Natural Resources Trustees.
- Frequently asked questions:

Why were these properties selected?

Mink rely heavily on steams as a food source and travel corridors. These properties were selected because they are near a stream that is a tributary to the Mohawk River and may provide good habitat for mink.

Will the IDA be subject to any new regulations or restrictions if they find mink on the property?

Even if evidence of mink is found on either property, there will be no changes to current lawful land-use practices.

When will the study begin?

Scat collection for the pilot phase of the project was completed at a handful of survey sites along the Mohawk and Hudson River watershed in July 2012. A second year of expanded scat collection is planned to begin May 2013 and will be completed by the middle of July 2013.

How long will the researchers be on the IDA's property?

Each visit will take approximately one hour.

What will researches do on the IDA's property?

Researchers will undertake several tasks, depending on the stage of the study. Initially, researchers will gather basic information about the habitat to better determine its likely suitability for mink. This information would include measurements of stream width, shoreline cover and bank slope.

At certain times, a "dog team" will be present to search for mink scat. The highly-trained dogs can smell scat and alert researchers when they find a sample. The researchers will collect the scat for further evaluation.

In addition, at some sites, small hair-sampling devices may be deployed. These devices are small, plastic, triangular-shaped tunnels (about 3 feet long and 5 inches tall) with brushes inside. The tunnels are baited to attract mink, and as the mink passes through the brushes collect hair. The hair sampling devices may be placed under logs or covered with leaves.

How many times will they visit? And when?

If selected, the IDA's property would be visited by a dog team three (3) times between May and July 2013. If researchers deploy hair collection devices on IDA property, researchers will visit to check the devices approximately every seven (7) days during the study period. Researchers will also conduct a brief habitat assessment.

Each visit will typically last less than an hour and will be during daylight hours, generally between 6:00 a.m. and 5:00 p.m. Visits may occur on weekdays or weekends.

Where exactly will the researchers go?

Researchers and dogs will focus their search along the stream on the IDA property, but the scat-detection dog and handler may also search along the banks and floodplain of the stream. Hair collection devices will be placed under bridges or near culverts.

Does an IDA representative need to be present when the researchers visit?
No.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He asked if there were any questions. These were none.

IDA ACTION:

MOTION: To approve having the Hudson River Natural Resources Trustees representatives having access onto the two (2) IDA parcels to conduct this study on mink populations.

MADE BY: Arlene Sitterly
SECONDED: Joseph Semione
VOTE: Unanimous

B. Executive Session:

1. Background:

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:
 - i. matters which will imperil the public safety if disclosed;
 - ii. any matter which may disclose the identity of a law enforcement agent or informer;
 - iii. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
 - iv. discussions regarding proposed, pending or current litigation;
 - v. collective negotiations pursuant to article fourteen of the civil service law;
 - vi. **the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;**
 - vii. the preparation, grading or administration of examinations;
 - viii. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

MOTION: To go into Executive Session to discuss, **“the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.”**

MADE BY : Len House
SECOND : Joseph Semione
VOTE : Unanimous
TIME : 8:50 a.m.

MOTION : To go out of Executive Session.
MADE BY : William Sullivan
SECOND : Arlene Sitterly
VOTE : Unanimous
TIME : 9:55 a.m.

V. CLOSE MEETING:

MOTION : To close the meeting.
MADE BY : Arlene Sitterly
SECONDED : Fran Reed
VOTE : Unanimous
TIME : 9:55 a.m.